IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1742 of 1996

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANAKKUMAR PARSOTTAMDAS MAKWANA - Appellant(s)
Versus
VALLABHBHAI ODHABHAI JETANI & 2 - Defendant(s)

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Appearance :
MR KUNJAL D PANDYA for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,
MS AMEE YAJNIK for Defendant(s) : 2,
MR RAJNI H MEHTA for Defendant(s) : 3,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 29/11/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

The appellant-claimant has challenged in this appeal the impugned judgment and award dated 18.1.1996 passed by the Motor Accident Claims Tribunal (Main), Bhavnagar whereby the learned Tribunal has partly allowed the claim petition of the appellant-claimant and awarded only Rs.43,000/- by way of compensation with interest @15% from the date of application till its realization against the total claim of Rs.3,65,362/- claimed in the petition.

The appellant met with an accident on four cross road near Devdi Chowk, Sardar Nagar area of Bhavnagar at 9.30 a.m. with Luna. In the accident, he suffered injury on his left leg. There was permanent disability of 40%. Initially, he lodged the claim of Rs.1,57,176/- before the learned Tribunal. Later on, the claim was enhanced to Rs.3,65,362/-. However, as stated earlier, the learned Tribunal awarded only Rs.43,000/- with interest @15%. Therefore, for the remaining amount of Rs.3,22,352/- present appeal is filed.

Learned counsel Mr.Pandya for the appellant firstly submitted that in the instant case, there was evidence of only appellant-claimant, whose evidence is not shaken in the cross-examination of the respondent Nos.1 and 2. He has clearly stated in his evidence that the incident has occurred because of the rash and negligent driving of the driver of

Luna. In spite of it, the learned Tribunal attributed 50% negligence to the appellant-claimant. He also submitted that for arriving at the conclusion that the appellant had also contributed to the negligence, the learned Tribunal has wrongly applied the principle of *res ispa loquitur* and considered the panchnama Ex.44. We have carefully gone through his evidence as well as his cross-examination. From his evidence it is clear the he had not filed complaint against the real driver of Luna. The case was filed now against respondent No.1. In fact, Luna was driven by driver. Panchnama Ex.44 clearly shows that both the vehicles were found in the middle of the road and both the vehicles had dashed. In addition to it what we have noticed in Panchnama Ex.44 that there was 6½ ft. break marks of scooter driven by the appellant, whereas there were no break marks of Luna. This clearly shows that appellant himself was going at a very excessive speed in the middle of road and met with the accident when he had seen Luna coming on the road from inside. Under the circumstances, it cannot be said that the learned Tribunal has wrongly attributed 50% negligence to the appellant-claimant, who was driving scooter. Hence, first contention of Mr.Pandya is rejected.

Mr.Pandya then submitted that once the doctor had given certificate and opined that there was permanent disability of 40%, then it was not open to the learned Tribunal to reduce it to 20%. At first look this submission seems to be attractive, but on

close scrutiny it found to be without substance for the reason that the appellant was serving as a Clerk in Gujarat Electricity Board at the time of accident, in 1990, he was getting monthly salary of Rs.3,300/- and in fact, when he deposed before the learned Tribunal in January, 1996 his salary was Rs.4,937/-. Thus, in fact there was no economic loss caused to him. In spite of it, the learned Tribunal considered only 20% functional disability. Such finding cannot be disturbed in this appeal. Hence, the second submission of Mr.Pandya is rejected.

Third contention was regarding awarding only Rs.36,000/- by way of economic loss. Mr.Pandya submitted that the learned Tribunal has not considered the chances of promotion of the appellant marred due to the accident. There is no substance in this submission. In fact, he was not found to be medically unfit after the accident and because of that only he was continued in the service. In fact he was getting more salary after six years as a Clerk. In our considered opinion, the learned Tribunal has rightly assessed monthly loss of Rs.600/- towards economic loss and rightly applied 5 years multiplier in view of the judgment of the Division Bench of this court in case of ***State of Gujarat v. Somabhai Dhurabhai Sindhava & Ors. reported in 1993(2) GLR 1043***. Hence, this contention of Mr.Pandya is rejected.

Mr.Pandya then submitted that the learned

Tribunal has not awarded anything towards future economic loss. When there was no future economic loss, then there was no question of awarding the same.

Mr.Pandya then submitted that there was a loss of capacity to earn. There is no substance in this submission as in fact there was no loss of capacity to earn.

In the instant case, applying multiplier of 5 years learned Tribunal has awarded Rs.36,000/- towards economic loss, then for expenses Rs.10,000/- was awarded for which no evidence was led. Rs.15,000/- for remaining on leave for 4 months and Rs.25,000/- towards shock, pain and suffering. Thus, in all, Rs.86,000/- was awarded and in our considered opinion rightly so. As the learned Tribunal had come to the conclusion that the appellant equally contributed to the negligence and awarded 50% negligence, therefore, it was slashed down to Rs.43,000/-. Under the circumstances, there is no question of interference of this court in this appeal with the impugned judgment and award passed by the learned Tribunal.

In view of the above discussion, this appeal fails and is hereby dismissed. No order as to costs.

(B.J.SHETHNA, J.)

(H.B.ANTANI, J.)

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